

# **RULE 805 NOTICE TO COMPLY**

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## 100 GENERAL

- 101 PURPOSE:** The purpose of this rule is to implement the provisions of Chapter 3 of Part 1 of Division 26 of the California Health and Safety Code (commencing with Section 39150) which define a minor violation and establish guidelines for issuing a Notice to Comply.
- 102 APPLICABILITY:** This rule applies to any person subject to state requirements, District rules or regulations, administrative or procedural plan or permit conditions, or requests for information or records by the District.
- 103 REINSPECTION:** Nothing in this rule shall be construed as preventing the reinspection of a site or facility to ensure compliance or to ensure that minor violations cited in a Notice to Comply have been corrected.
- 104 ENFORCEMENT OF FEDERAL LAWS:** The issuance of a Notice to Comply for a violation of state law will not interfere with an agency's ability to enforce all federal requirements or laws.

## 200 DEFINITIONS

For the purposes of this rule the following definitions apply.

- 201 CHRONIC VIOLATION:** A violation that reflects a pattern of neglect or disregard that results in the same or similar violation at the same source, facility, or same piece of equipment.
- 202 INFORMATION:** Data, records, photographs, maintenance records, analyses, plans, or specifications which will disclose the nature, extent, quantity, or degree of air contaminants which are, or may be, discharged by the source for which a permit was issued or applied or which is subject to state or federal requirements, District rules or regulations, administrative or procedural plan or permit conditions, or requests for information or records by the District.
- 203 MINOR VIOLATION:** The failure of any person to comply with administrative or procedural requirements of applicable state requirements, District rules or regulations, administrative or procedural plan or permit conditions, or requests for information or records by the District which meets the following criteria:
- 203.1 Does not result in an increase of emissions of air contaminants;
  - 203.2 Does not endanger the health, safety, or welfare of any person or persons;
  - 203.3 Does not endanger the environment;
  - 203.4 Does not cause or contribute to the violation of any State or National Ambient Air Quality Standard;
  - 203.5 Does not preclude or hinder the District's ability to determine compliance with other applicable state or federal requirements, District rules and regulations, administrative or procedural plan or permit conditions, or requests for information or records.
- 204 NOTICE TO COMPLY:** A written method of alleging a minor violation that meets the requirements of Health and Safety Code Section 39151.
- 205 PROCEDURAL REQUIREMENT:** A provision of a rule or regulation that establishes a manner, method, or course of action, but does not specify, limit, or otherwise address direct air contaminant emissions.

- 206 RECALCITRANT VIOLATOR:** A person or facility where there is evidence indicating that the person or facility has engaged in a pattern of neglect or disregard with respect to the requirements of District rules and regulations, permit conditions, or other applicable provisions of state or federal law or regulations.

### **300 STANDARDS**

- 301 MINOR VIOLATIONS:** Except as otherwise provided in Section 306, a Notice to Comply shall be the only means by which the APCO shall cite a minor violation. The APCO shall not take any other enforcement action specified in this rule to enforce the minor violation against a person or facility who has received a Notice to Comply if the person or facility is in compliance with these Standards.

301.1 Notwithstanding Section 203, above, no violation of an applicable state or federal requirement, District rule or regulation, administrative or procedural plan or permit condition, or request for information or records shall be considered a minor violation if:

301.1.1 The violation involves failure to comply with the emission standards in the applicable rule or regulation, including requirements for control equipment, emissions rates, concentration limits, product material limitations, and other rule provisions directly associated with emissions; or

301.1.2 The violation is knowing, willful, or intentional; or

301.1.3 The violation enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage; or

301.1.4 The violation is chronic; or

301.1.5 The violation is committed by a recalcitrant violator; or

301.1.6 The violation results in a nuisance.

- 302 IMMEDIATE CORRECTION OF MINOR VIOLATIONS:** A Notice to Comply shall not be issued for any minor violation that is corrected immediately in the presence of the inspector. Immediate compliance in that manner may be noted in the inspection report or other District documents, but the person or facility shall not be subject to any further action by the District's representative or an authorized or designated officer. Corrected minor violations may be used to show a pattern of disregard or neglect by a recalcitrant violator.

- 303 CORRECTION REQUIREMENTS FOR NOTICES TO COMPLY:** Any person who receives a Notice to Comply shall have up to 30 days or the period specified in the Notice to Comply, whichever is less, from the date of receipt of the Notice to Comply in which to achieve compliance with the requirement cited on the Notice to Comply.

- 304 FAILURE TO RESPOND:** Within five (5) working days of achieving compliance, the person who received the Notice to Comply shall sign and return it to the District, stating that the person has complied with the Notice to Comply. The returned Notice to Comply shall also include a written statement describing when and how compliance was achieved. Failure to respond or a false statement that compliance has been achieved is a violation subject to further legal action pursuant to the Health and Safety Code, Section 42400, et seq.

- 305 TESTING:** If testing is required by the state board or District or an authorized or designated officer to determine compliance, and the testing cannot be conducted during the course of the inspection, the APCO shall have a reasonable period of time to conduct the required testing.
- 305.1 If, after the test results are available, the APCO determines that the issuance of a Notice to Comply is warranted, the APCO shall immediately notify the person or facility owner or operator in writing.
- 305.2 If off-site testing is required pursuant to this Section, a copy of the Notice to Comply may be mailed to the person or owner or operator of the facility.
- 306 FAILURE TO COMPLY:** Notwithstanding any other provision of this rule, if a person or facility fails to comply with a Notice to Comply within the prescribed period, or if the APCO determines that the circumstances surrounding a particular minor violation are such that immediate enforcement is warranted to prevent harm to the public health or safety or to the environment, the APCO may take any needed enforcement action authorized by law.
- 307 NECESSARY INFORMATION:** Nothing in this rule shall be construed as preventing the APCO, on a case-by-case basis, from requiring a person or facility subject to a Notice to Comply to submit reasonable and necessary information to support a claim of compliance by the person or facility.

#### **400 ADMINISTRATIVE REQUIREMENTS**

- 401 CITING A NOTICE TO COMPLY:** A single Notice to Comply shall be issued for all minor violations cited during the same inspection and the Notice to Comply shall separately list each cited minor violation and the manner in which each minor violation may be brought into compliance.
- 402 APPEALS:** Any person who is issued a Notice to Comply may appeal the issuance by filing a written appeal with the APCO within five (5) working days of receipt of the Notice. The appeal shall state the grounds and basis for the appeal and include any evidence as to why the Notice to Comply should not have been issued. The APCO shall grant or deny the appeal within ten (10) working days of the filing of the Appeal. If the APCO fails to respond, the appeal shall be deemed denied. The APCO's decision shall be final.
- 403 PENALTY FOR FAILURE TO COMPLY:** Any person or facility who fails to comply by the date specified on the Notice to Comply shall be subject to further enforcement action pursuant to the Health and Safety Code, Section 42400, et seq., or any other applicable law.
- 404 ADDITIONAL PENALTIES:** Notwithstanding any other provision of this rule, if the APCO determines that the circumstances surrounding a particular minor violation are such that the assessment of a penalty pursuant to this rule is warranted or required by federal law, in addition to issuance of a Notice to Comply, the District shall assess a penalty in accordance with Division 26 of the Health and Safety Code, Section 42400, et seq., if the APCO makes written findings that set forth the basis for the determination of the District.
- 405 EXPIRATION:** This rule shall remain in effect only until January 1, 2001, and as of that date is repealed unless a later enacted rule, which is enacted on or before January 1, 2001, deletes or extends that date, or unless Health and Safety Code Sections 39150 - 39153 are extended beyond that date by an act of the Legislature which is signed into law by the Governor.

#### **500 MONITORING AND RECORDS:** (None)

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